

may apply for a construction permit to activate one of the two vacant, unapplied for UHF channels at Lincoln.^{6/}

27. Moreover, the allotment of a VHF channel at Lincoln makes no sense in view of the fact that the Commission has proposed in MM Docket 87-268 to move all VHF television stations to the UHF band as part of the conversion to Advanced Television Systems ("ATV"). The public interest would, therefore, be best served by activation of one of the two UHF channels at Lincoln that would avoid the disruption of service that would result when Lincoln-8 is ultimately required to move to a UHF channel as a result of the ATV conversion.

^{6/} As Busse pointed out in its Comments, the Commission's records reflect that: (1) the construction permit granted to Native American Communications Corporation for Channel 45 at Lincoln was canceled on March 9, 1987; and, (2) the construction permit held by Payvision Communications for Channel 51 at Lincoln was canceled on March 21, 1985.

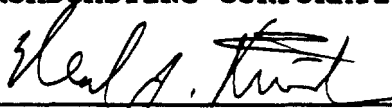
IV. CONCLUSION

For the forgoing reasons, Busse Broadcasting Corporation respectfully requests that the staff reconsider its action and deny the Petition for Rulemaking filed on behalf of Citadel Communications Co., Ltd. to substitute UHF Channel 18 for VHF Channel 8 at Albion, Nebraska and allot VHF Channel 8 at Lincoln, Nebraska.

Respectfully Submitted,

BUSSE BROADCASTING CORPORATION

By



Vincent A Pepper
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Its Attorneys

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June 3, 1993

EXHIBIT 1

John P. Allen

Airspace Consultant

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STATE OF FLORIDA)

)

COUNTY OF NASSAU)

AFFIDAVIT OF JOHN P. ALLEN

I, John P. Allen, being first duly sworn, do hereby depose and state that I am an Airspace Consultant in private practice, with offices at 1628 Calhoun Street, Fernandina Beach, Florida. My qualifications are a matter of record with the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC). A brief resume is attached hereto as "Attachment A."

I have been retained by Busse Broadcasting Corporation ("Busse"), licensee of KOLN-TV, Lincoln, Nebraska and its satellite, KGIN-TV, Grand Island, Nebraska, to conduct an independent aeronautical evaluation of a proposed antenna tower location near Lincoln, Nebraska. Specifically, I was requested to determine whether or not the proposed antenna tower locations contained within the Report and Order granting the Petition for Rule Making filed on behalf of Citadel Communications Company ("Citadel"), would have substantial adverse effect to the Nebraska navigable airspace.

My independent aeronautical evaluation was conducted in accordance with the standards for determining obstructions to the navigable airspace as set forth in Subpart C of Part 77 of the Federal Aviation Regulations.

Citadel's proposed antenna structure located near Lincoln, is located at Coordinates: Latitude 41-01-10 North - Longitude 97-07-23 West (North American Datum - 1927), at a height of 1500 feet above ground level (AGL) - 3040 feet above mean sea level (AMSL). My evaluation disclosed that the proposed would exceed the standards of Part 77 as follows:

- 77.23(a)(1) by 1040 feet, its height in excess of 500 feet AGL
- 77.23(a)(3) by 900 feet, as it will require an increase of the procedure turn altitude from 3100 feet to 4000 feet AMSL and the final approach fix altitude from 2600 feet to 3500 feet AMSL for the NDB Runway 16 standard instrument approach procedure serving the Seward Municipal Airport
- 77.23(a)(3) by 991 feet as it will require an increase of the Lincoln Radar Approach Control minimum vectoring altitude within three nautical miles of the proposed site from 3000 feet to 4000 feet AMSL
- 77.23(a)(3) by 135 feet, as it will effect aircraft departing Runway 34 as Seward Municipal Airport

Of the identified aeronautical effects, the increase of the final approach course altitude is of the most concern. The proposed tower is located underneath the intermediate segment of the NDB Runway 16 procedure and at its proposed height will penetrate the existing aeronautical surface by 900 feet. The FAA will be required to increase the published final approach fix altitude from 2600 feet AMSL to 3500 feet AMSL. This requisite

height increase will exceed the descent gradient criteria contained within the United States Standard for Terminal Instrument Procedures (TERPS) FAA Handbook 8260.3.

Terps criteria for descent gradients regarding this type of instrument approach procedure, recommends a 300 feet per nautical mile rate of descent, with a maximum of 400 feet per nautical mile. The descent gradient from the final approach fix to the landing threshold today is 365 feet per nautical mile (2600 feet minus 1504 feet (runway elevation), remainder divided by 3 (distance from final approach fix to landing threshold)). With the height increase required by the proposed structure, the descent gradient will increase to 532 feet per nautical mile from the final approach fix to the landing threshold. This descent gradient of 532 feet will in essence cancel the straight-in landing minimums for this procedure.

The cancelling of the straight-in minimums will be viewed by the aeronautical user and the FAA as a decrease in the utility or availability of the Seward Municipal Airport during periods of low cloud ceilings and/or reduced visibility. Any reduction of the utility or availability of an airport would be considered as a substantial adverse effect and would require the FAA Regional Office to issue a determination of hazard to air navigation for the proposed structure.

The next aeronautical concern deals with the increase of the Lincoln Radar Approach Control minimum vectoring altitude.

Through conversations with the air traffic controllers at Lincoln Approach, they stated that the minimum vectoring altitude at 3000 feet was used on a regular and continual basis. They also believed that the loss of a cardinal altitude (3,000 feet) would increase user delays and would compress the navigable airspace. Based upon the statements of Lincoln Radar Approach Control, the FAA would consider the increase of the minimum vectoring altitude as a substantial adverse effect and would require the FAA Regional to issue a determination of hazard for any height above 2049 feet AMSL.

One other aeronautical concern that is not really protected under Part 77 would be the existing Army training routes that are used on a regular basis for low altitude navigation (day and night). These routes are flown at low altitude (NAP of the earth) and start near Dwight and continue southwest and south to a point just east of Seward Municipal Airport. These routes may not receive protection from FAA, however, local zoning could protect them.

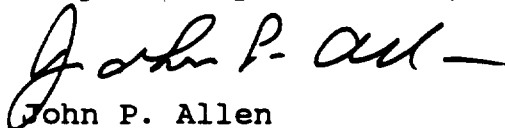
The remaining aeronautical effect (increase departure procedure) would be considered by the FAA as minor procedural adjustments and be of no real aeronautical consequence.

The conclusion of this aeronautical study would be that a proposed height of 539 feet AGL - 2049 feet AMSL, although still exceeding the standards of Part 77 (77.23(a)(1) by 39 feet), would eventually receive a determination of no hazard after a

complete aeronautical study by the FAA, including circularization to the aeronautical community for their comments.

In conclusion, it is my professional opinion, that the proposed site located near Lincoln at a height of 538 feet AGL - 2049 feet AMSL would be acceptable to FAA and would receive a determination of no hazard to air navigation. Any height above the aforementioned values would not be acceptable to the FAA and based upon the findings, would warrant a determination of hazard to air navigation.

Respectfully submitted,


John P. Allen

Subscribed and sworn to before me, the undersigned Notary Public, this 2nd day of June, 1993, by the within-named John P. Allen, well known to me to be the person executing this document.


Notary Public

My Commission Expires:

CLYDE GOODBREAD, NOTARY PUBLIC
THE STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES 02-03-94

ATTACHMENT "A"

ABOUT JOHN P. ALLEN

PROFESSIONAL EXPERIENCE:

Airspace Consultant 1981-Present: Conducts aeronautical evaluations for proposed construction or alteration of structures; files appropriate forms with the Federal Aviation Administration; amends aeronautical surfaces when required; conducts negotiations and provides testimony on behalf of sponsors with FAA, FCC or local governmental bodies concerning technical matters relating to Aviation Safety.

FAA Air Traffic Controller 1968 to 1981

U. S. Air Force Air Traffic Controller 1964 to 1968

PROFESSIONAL ACTIVITIES:

Representative to the National Transportation Safety Board as an expert in air traffic control 1975 to 1977

Chairman of the Facility Air Traffic Technical Advisory Committee 1975 to 1977

Representative to the National Aviation Safety Council 1977 to 1981

Member of the Society of Broadcast Engineers

Member of the Fernandina Beach Airport Advisory Commission

Associate Membership:

Association of Federal Communication Consulting Engineers

National Association of Broadcasters

EDUCATION:

Bachelor of Science Degree. Management/Small Business Administration 1977, Jones College, Jacksonville, Florida

Professional Certifications: Air Traffic Controller

EXHIBIT 2

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of BUSSE BROADCASTING CORPORATION, licensee of KOLN(TV), Lincoln, Nebraska, in support of its Petition for Reconsideration in MM Docket No. 91-304

In this proceeding Citadel Communications Company, Ltd. ("Citadel"), proposed that its KCAN(TV), Channel 8, Albion, Nebraska, be reallocated to Lincoln. Although it presently operates as a satellite of co-owned KCAU-TV, Channel 9, Sioux City, Iowa, KCAN would operate as a full-service station, once it moves to Lincoln. Citadel further proposed that Channel 18 be allotted to Albion, and that it would apply to construct a Channel 18, Albion, facility. If the application were granted, Citadel would construct the facility and operate it as a satellite of KCAU-TV, partly replacing the satellite service that would be lost as a result of the KCAN reallocation.

Despite the objections of a number of parties, including KOLN, the Commission has granted the Citadel proposal. However, since this decision cannot be supported by the facts, KOLN must seek reconsideration. The errors involve the extent of service overlap that would result, the gains and losses with respect to underserved areas, and the fact that the overall plan cannot be effectuated.

With respect to the contour overlap that would result, we attach Figure 1, which shows portions of the Grade B contours of KCAU-TV; the

proposed KCAN, Lincoln, facility; and the proposed Channel 18, Albion, facility. The Channel 18 contour is based on a facility of 2500 kw at 1200 feet, as proposed by Citadel, at the geographic coordinates proposed by Citadel. The KCAN facility is as proposed by Citadel but at the geographic coordinates specified by the Commission in its *Report and Order*.

Figure 2 is a tabulation of population and area data covering the overlap areas. Where available, we have used figures from the Commission's *Report and Order* or from the Citadel submissions, since there would appear to be no purpose in arguing these specifics. KOLN figures are used only where no others are available from the record. (All of these population figures are from the 1990 U. S. Census.)

Figure 3 addresses the question of gains and losses. It shows the Grade B contours of the present KCAN operation, the proposed KCAN operation, and the proposed Channel 18, Albion, operation, with a portion of the KCAU-TV Grade B contour for reference. In addition, we have shown the areas in question that would gain or lose a first or second Grade B service under this proposal. While a number of other Grade B contours enter parts of the gain and loss areas, we have shown only those that define the areas with zero or one other service. Pertinent population and area data is tabulated in Figure 4.

The Commission said in its *Report and Order* that the Citadel proposal, as modified in its decision, would provide a first service to 12,433 persons in 1742 square kilometers and a second service to

14,641 persons in 4059 square kilometers. Based on the record, KOLN cannot find any support for figures so large. However, it appears unnecessary to reach agreement on this set of numbers, because it appears to be based on obsolete Commission standards. During the pendency of this proceeding, the Commission has determined that showings of other television services must now include other noncommercial services. As shown in Figures 3 and 4, the correct figures for a first service are 585 persons in 137 square kilometers, and 6985 persons in 2833 square kilometers for a second service.

Although these figures are dramatically lower than those used by the Commission, they are still inflated, because they do not consider other programming sources, such as cable systems or translators. Our study established that the only identifiable community that would receive a first television service is Virdigre, Nebraska, and that the new first service would include approximately 70 percent of Virdigre, population 607. However, Virdigre is served by a cable system and by four translators carrying ABC, CBS, NBC, and PBS programming. Thus, one may properly exclude Virdigre from this gain area, meaning that the effectuation of this proposal would provide a new first television service to 160 persons, clearly a negligible figure in this context.

Similarly, the area that would gain a second service includes three identifiable communities: Emmet, O'Neill, and Burwell. Emmet has a population of 70 persons and is a community in name only. Burwell (620 persons) is served by a cable system and translators carrying CBS and NBC

programing. O'Neill (3852 persons) is also served by a cable system and translators carrying ABC, CBS, and NBC programing. If Burwell and O'Neill are removed form the equation, we are left with only 2513 persons who would receive a second service, which is about 17 percent of the figure on which the Commission based its decision.

However, even these figures may overstate the service that would be provided to underserved areas under the Citadel proposal. Although Citadel uses facilities of 2500 kw at 1200 feet as its reference for Channel 18, there is nothing in the Citadel proposal or in the Commission's *Report and Order* that requires such facilities. In reality, Citadel could economize significantly by specifying facilities that comply with the Rules simply by meeting the spacing requirements, meeting the principal city coverage standard, and specifying no less than the minimum allowable power (100 watts). We calculate that with the specified effective height of 1200 feet at the Commission's coordinates, Citadel could propose an ERP of 200 kw and provide 80 db μ service to at least 80 percent of Albion, thereby complying with the current interpretation of the principal city coverage Rule.

In Figure 5 we show the same Grade B contours as in Figure 3, but with the Channel 18 contour being that which would result from operation with 200 kw at 1200 feet. Population and area data is included in Figure 6. As shown, instead of a net gain in service to white and gray areas, there would be a net loss in service to such areas. Instead of 585 persons receiving a first service, 315 persons would lose their only service.

Similarly, instead of 6985 persons receiving a second service, 2290 persons would be reduced to a single service.

Finally, we come to the real-world question as to whether or not this scenario could ever be accomplished. In its petition Citadel specified geographic coordinates for its proposed Channel 18 facility but never discussed the nature of this particular site. Figures 7-A and 7-B are small- and large-scale topographic maps showing this site. As indicated, this general area is sparsely settled, and the specified site is quite remote. Even if FAA approval could be obtained for a tall tower at this location, there is no information at hand to indicate whether or not the site is accessible, primary power is available, there may be environmental problems, or, even that the property is indeed available for Citadel's purposes. Considering that the site is in an area of sand hills, ecological concerns might well prevent such construction.

Similarly, in Figures 8-A and 8-B we have plotted the site that the Commission specified for the operation of KCAN as a Lincoln station. Although this area is less remote than the Channel 18 site, it is also in a relatively unpopulated area, and the same questions exist as to the practicability of constructing a television facility at this location. However, of greater significance is the fact that any proposal to erect a tall tower at this site would surely receive a Determination of Hazard from the FAA. Included in this pleading is a statement by the recognized aeronautical expert, John Allen, clearly demonstrating that a tall tower would not be

permitted at this location.

The decision in this proceeding was based essentially on the apparent increase in service to white and gray areas. However, whether or not a service increase would result would depend on the ability of Citadel to construct and operate as the Commission expects, but it is clear that Citadel cannot do so. Thus, the Commission's decision in this proceeding was based on erroneous and/or incomplete information, since certain of the steps necessary to implement it cannot be completed. Further, without the "approximately 27,000" persons who would receive a first or second service, the Commission's decision is insupportable.

I declare under penalty of perjury that the foregoing statements and the attached exhibits, which were prepared by me or under my immediate supervision, are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'Neil M. Smith', with a long horizontal stroke extending to the right.

NEIL M. SMITH

June 3, 1993

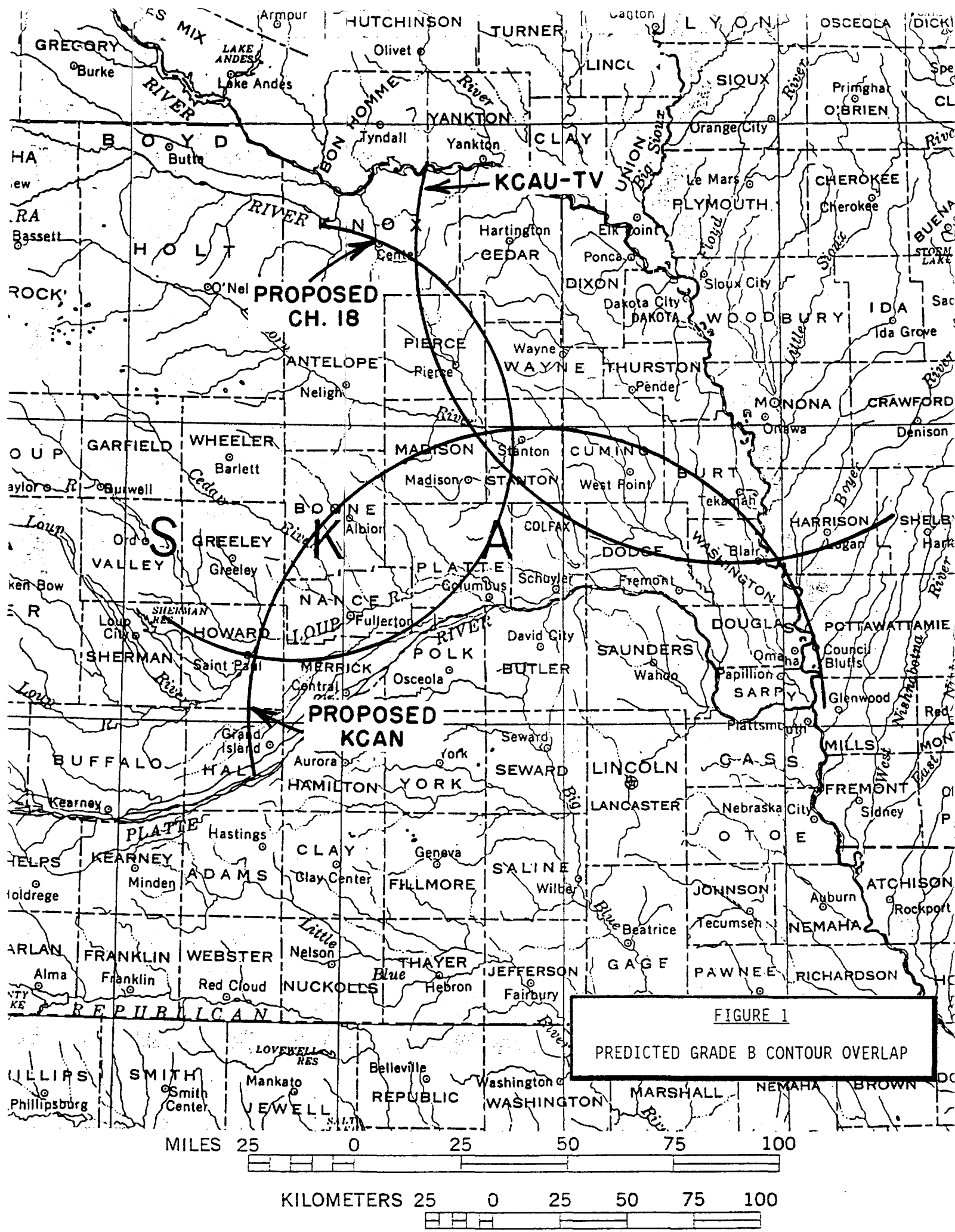


FIGURE 1
PREDICTED GRADE B CONTOUR OVERLAP

FIGURE 2

GRADE B CONTOUR OVERLAP AREAS

	Population	Area	
		Sq. Km.	Sq. Mi.
Proposed Ch. 18 total	95,057	21,642*	8,356
Overlap with KCAU-TV	29,905 (31%)	1,070 (4.9%)	413 (4.9%)
Overlap with proposed KCAN	20,962 (22%)	3,595 (16%)	1,388 (16%)
KCAU-TV total	634,879**	45,505*	17,571
Overlap with proposed Ch. 18	29,905 (4.7%)	1,070* (2.4%)	413 (2.4%)
Overlap with proposed KCAN	46,787** (7.4%)	4,548 (10%)	1,756 (10%)
Proposed KCAN total	1,129,857**	36,525	14,103
Overlap with KCAU-TV	46,787** (4.1%)	4,548 (12%)	1,756 (12%)
Overlap with proposed Ch. 18	20,962 (1.9%)	3,595 (9.8%)	1,388 (9.8%)

* per Citadel

** per FCC

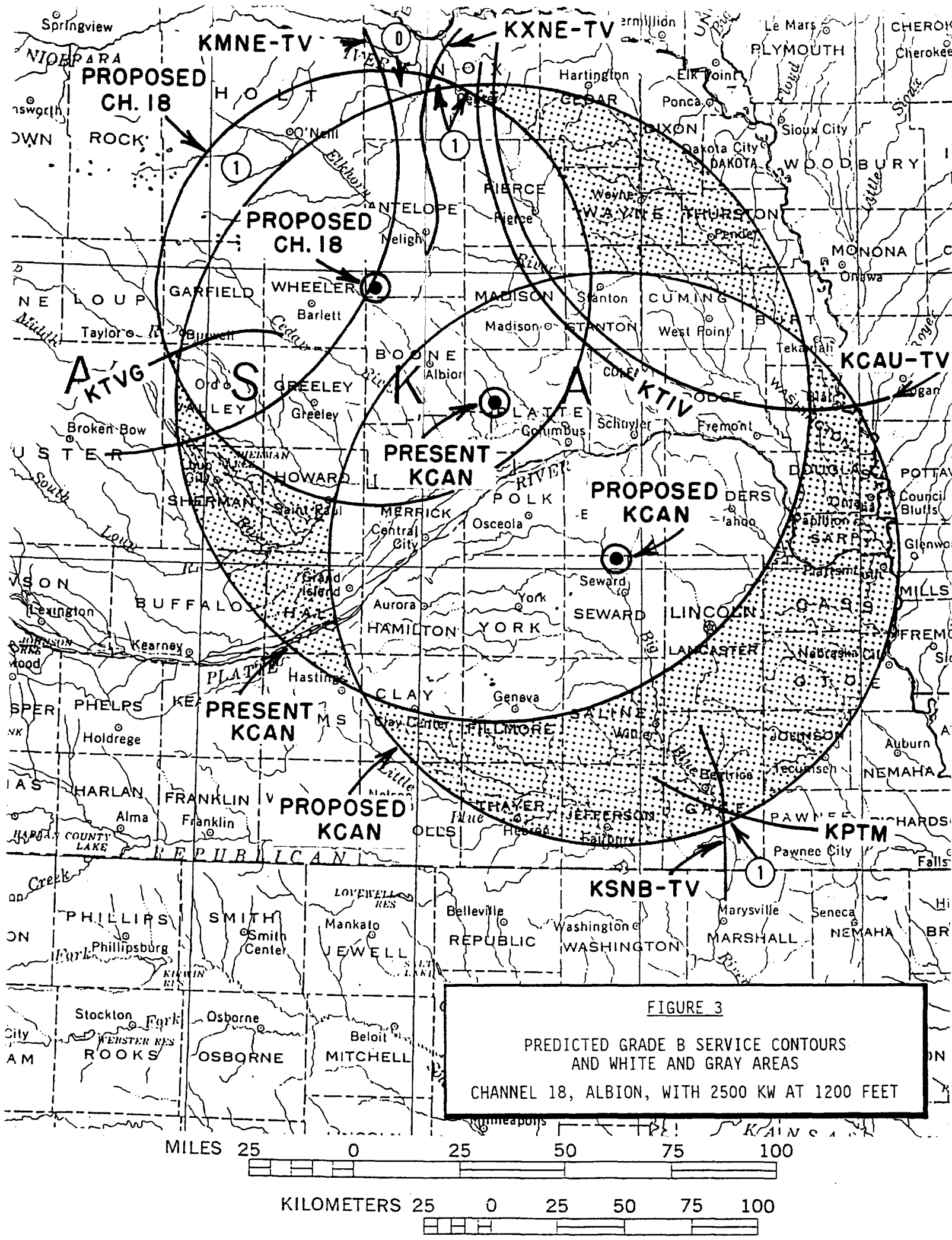


FIGURE 3
 PREDICTED GRADE B SERVICE CONTOURS
 AND WHITE AND GRAY AREAS
 CHANNEL 18, ALBION, WITH 2500 KW AT 1200 FEET

FIGURE 4

POPULATION AND AREA DATA
(WITH CHANNEL 18, ALBION, AT 2500 KW AND 1200 FEET)

	Population	Area	
		Sq. Km.	Sq. Mi.
Present KCAN	469,469	45,237	17,467
Proposed KCAN	1,060,907	36,817	14,216
Proposed Albion	92,920	21,721	8,387
<u>Loss Area</u>			
TOTAL	45,136*	7,741*	2,989*
No other services	--	--	--
One other service	11	10	4
<u>Gain Area</u>			
TOTAL	707,702	16,321	6,302
No other services	585	137	53
One other service	6,985	2,833	1,094

* Commission figures are 51,441 persons in
8,729 square kilometers (3,371 square miles).

NOTE: Due to rounding, metric totals may not be precise.

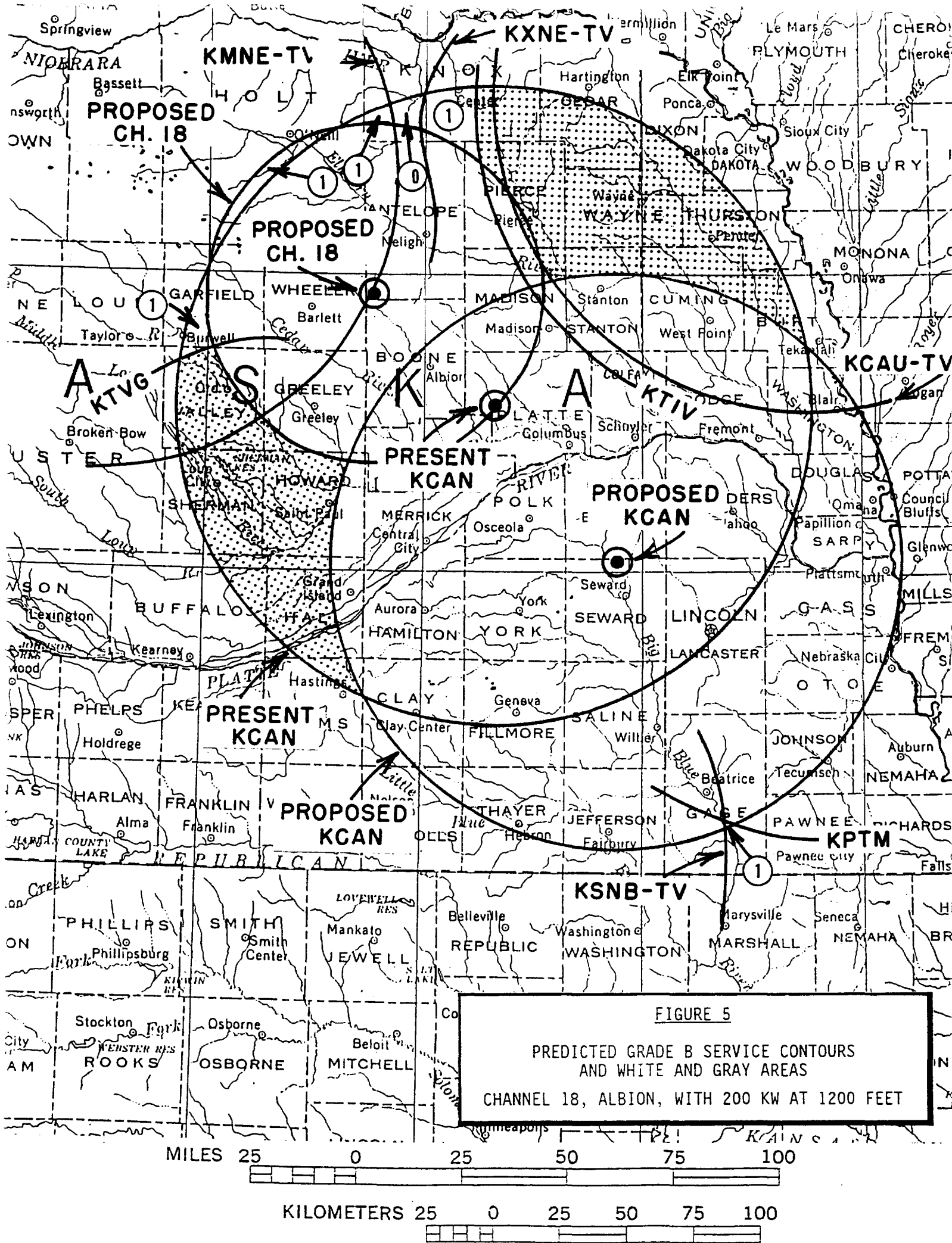


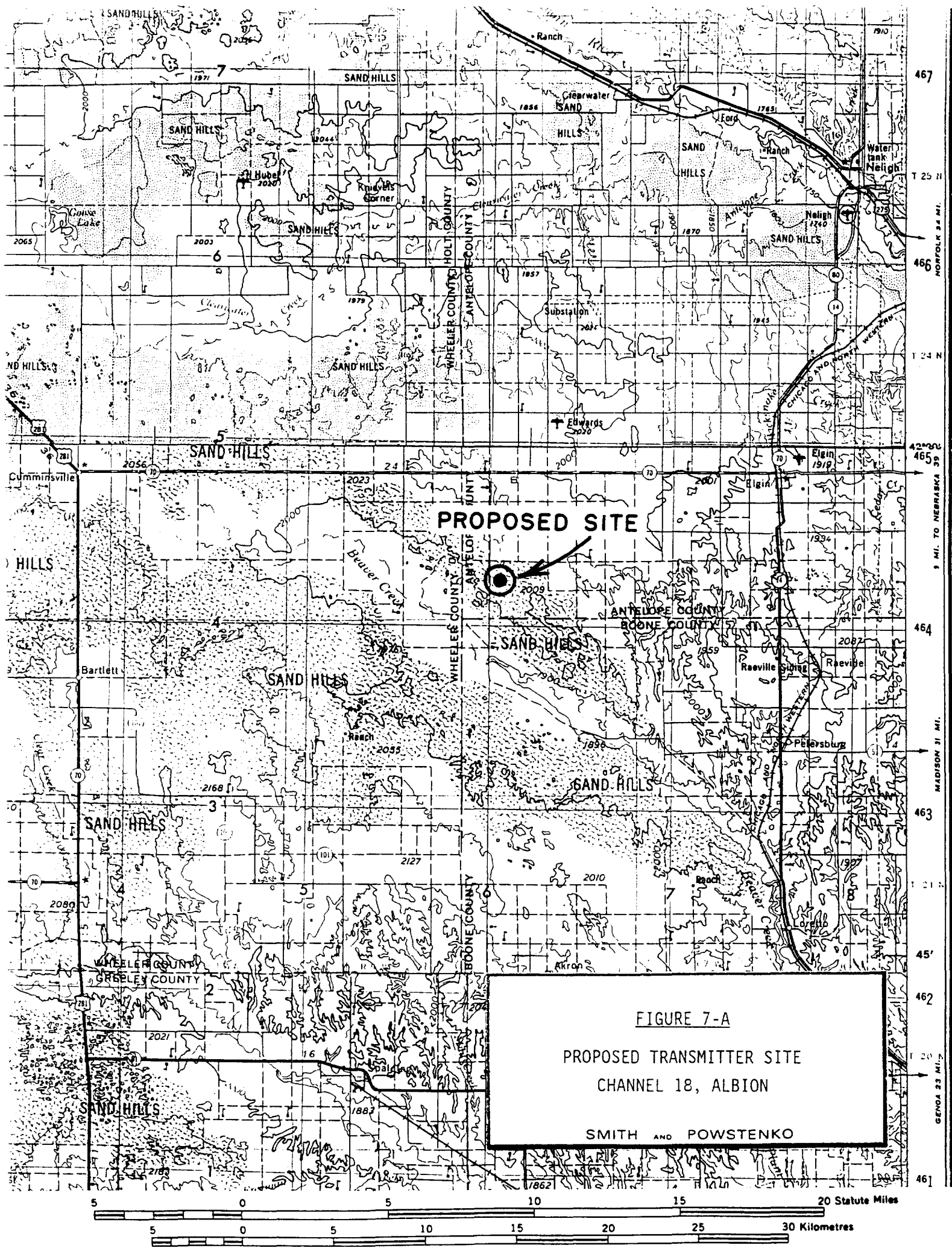
FIGURE 5
 PREDICTED GRADE B SERVICE CONTOURS
 AND WHITE AND GRAY AREAS
 CHANNEL 18, ALBION, WITH 200 KW AT 1200 FEET

FIGURE 6

POPULATION AND AREA DATA
(WITH CHANNEL 18, ALBION, AT 200 KW AND 1200 FEET)

	<u>Population</u>	<u>Area</u>	
		<u>Sq. Km.</u>	<u>Sq. Mi.</u>
Present KCAN	469,469	45,237	17,467
Proposed KCAN	1,060,907	36,817	14,216
Proposed Albion	32,468	12,778	4,934
<u>Loss Area</u>			
TOTAL	84,375	11,235	4,338
No other services	315	111	43
One other service	2,290	691	267
<u>Gain Area</u>			
TOTAL	699,527	13,345	5,153
No other services	--	--	--
One other service	423	293	113

NOTE: Due to rounding, metric totals may not be precise.



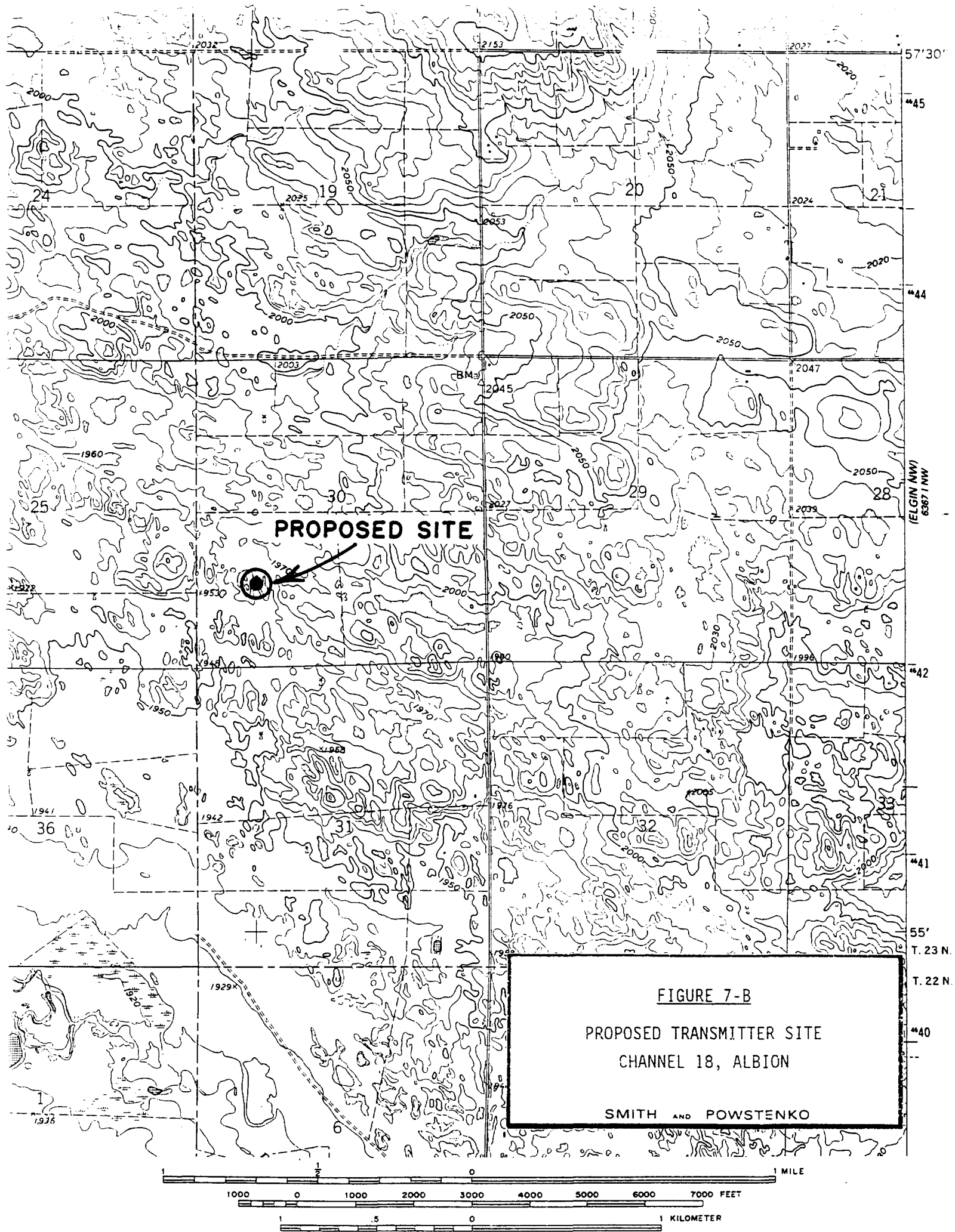
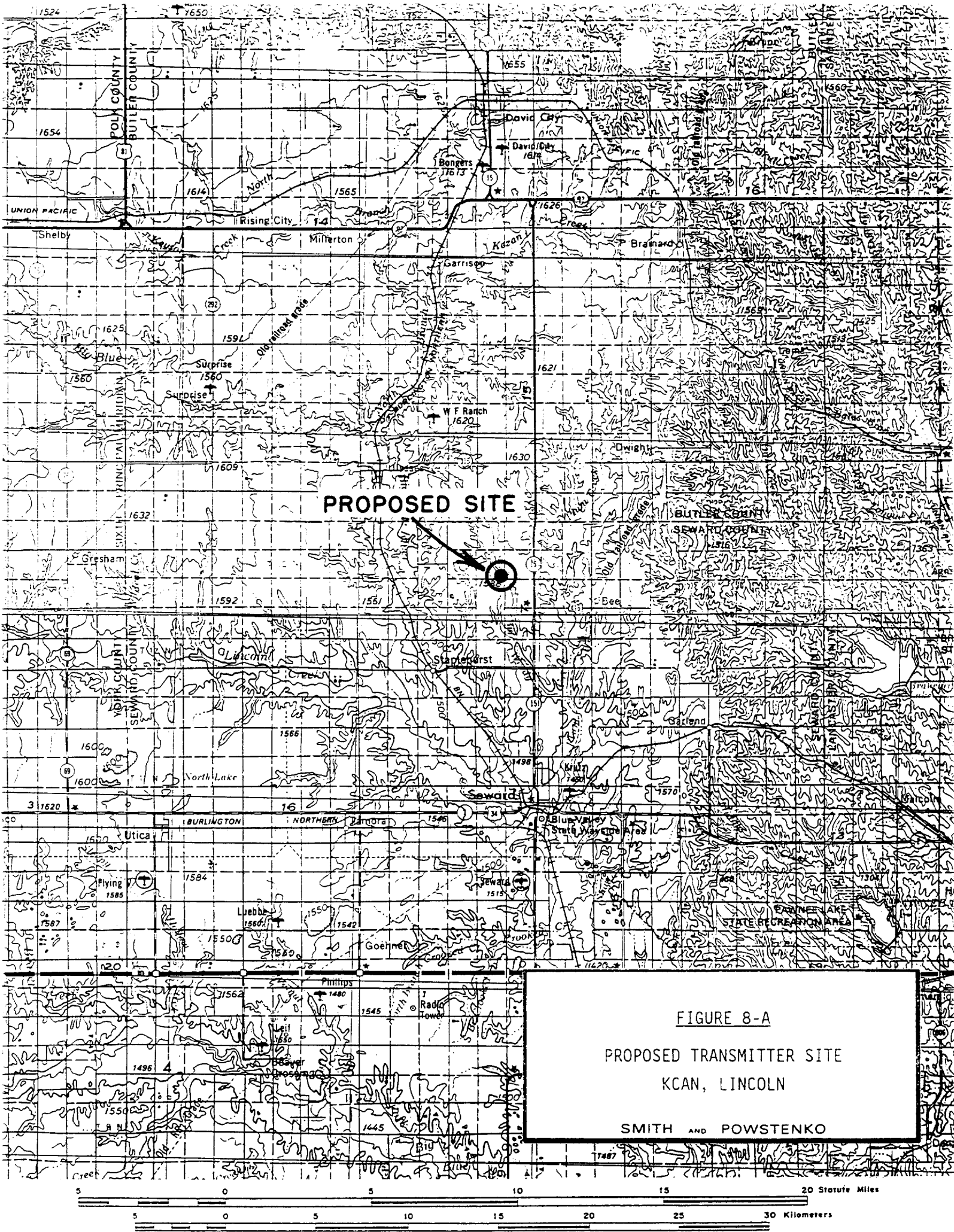


FIGURE 7-B
PROPOSED TRANSMITTER SITE
CHANNEL 18, ALBION
SMITH AND POWSTENKO



PROPOSED SITE

FIGURE 8-A

PROPOSED TRANSMITTER SITE
KCAN, LINCOLN

SMITH AND POWSTENKO